

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

94-0518

STATE OF OHIO, ex rel.
LEE FISHER
ATTORNEY GENERAL OF OHIO,

Plaintiff,

vs.

DAYTON ELECTROPLATE, INC.
1030 Valley Street
P.O. Box 277
Dayton, Ohio 45404

and

CHARLES J. BORUM
1030 Valley Street
P.O. Box 277
Dayton, Ohio 45404

and

PAUL W. BORUM
106 Del Park Avenue
Oakwood, Ohio 45419

Defendants.

CASE NO. _____

JUDGE _____

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTY

RECEIVED
OHIO EPA

MAR 02 94

DIVISION of
HAZARDOUS WASTE MGT.

EPA Region 5 Records Ctr.



253901

The State of Ohio, on relation of its Attorney General, Lee Fisher, at the written request of the Director of Environmental Protection, does hereby institute this action to enforce Chapter 3734 of the Ohio Revised Code ("O.R.C.") and the rules adopted thereunder.

GENERAL ALLEGATIONS

1. Defendant Dayton Electroplate, Inc. is a "person" as defined by O.R.C. Section 3734.01(G), and Ohio Administrative Code ("O.A.C.") Rule 3734-50-10(83).

2. Defendant Dayton Electroplate, Inc. is a corporation for profit organized under the laws of the State of Ohio which has its principal place of business at 1030 Valley Street, Dayton, Montgomery County, Ohio.

3. Defendant Charles J. Borum, is a "person" as defined by O.R.C. Section 3734.01(G) and O.A.C. Rule 3734-50-10(83).

4. Defendant Paul W. Borum, is a "person" as defined by O.R.C. Section 3734.01(G) and O.A.C. Rule 3734-50-10(83).

5. At all times relevant to this Complaint, Defendants Charles J. Borum and Paul W. Borum have been president and vice president, respectively, or have held equivalent positions at Defendant Dayton Electroplate, Inc.

6. Defendants Charles J. Borum and Paul W. Borum, by virtue of their respective positions as president and vice president of Defendant Dayton Electroplate, Inc., in their personal capacities alone or in conjunction with others, caused, controlled, participated in, and/or ordered the violations of law alleged in this Complaint. In addition to or in the alternative, Defendants knew or should have known about these violations, and by themselves or in conjunction with others had the authority to prevent or stop these violations, but failed to exercise this authority to do so. Defendants are personally liable for these violations.

7. Defendants Dayton Electroplate, Inc., Charles J. Borum and Paul W. Borum (hereinafter "Defendants") own and/or operate an electroplating business located primarily at 1030 Valley Street, Dayton, Montgomery County, Ohio, (hereinafter referred to as "the Facility").

8. As a result of activities at the Facility, Defendants generated wastes which are listed as hazardous under O.A.C. Rule 3745-51-31.

9. Defendants are "generators" of hazardous waste as defined under O.A.C. Rule 3745-50-10(38).

10. Defendants "stored" this hazardous waste at the Facility as that term is defined by O.R.C. Section 3734.01(M) and O.A.C. Rule 3745-50-10(A)(102).

11. The Facility is a "hazardous waste facility" as defined by O.R.C. Section

3734.01(N) and O.A.C. Rule 3745-50-10(A)(32).

12. Defendants are "owners" and/or "operators" as defined by O.A.C. Rules 3745-50-10(A)(79) and 3745-50-10(a)(78), respectively, of a hazardous waste facility.

13. Paragraphs one (1) through twelve (12) are hereby incorporated into each Count of this Complaint as if fully restated herein.

COUNT ONE

14. O.R.C. Section 3734.02(F) provides that no person shall store, treat or dispose of hazardous waste regardless of whether generated on or off the premises except at a facility which meets the criteria of O.R.C. Section 3734.02(F), such as a hazardous waste facility operating under a permit issued in accordance with O.R.C. Chapter 3734.

15. Since at least September 21, 1990, and continuing until the present, Defendants stored, treated and/or disposed of hazardous waste at a site other than one authorized pursuant to O.R.C. Section 3734.02(F). *until closed*

16. The conduct alleged in this Count constitutes violations of O.R.C. Section 3734.02(F) and O.R.C. Section 3734.11 for which Defendants are subject to injunctive relief pursuant to O.R.C. Sections 3734.10 and 3734.13(C) and for which Defendants are liable to pay to the State of Ohio a civil penalty of up to ten thousand dollars (\$10,000.00) for each day of each violation pursuant to O.R.C. Section 3734.13(C).

COUNT TWO

17. O.A.C. Rules 3745-52-13 and/or 3745-65-13 provide that the owner or operator of a facility evaluate wastes and develop and follow a written waste analysis plan before he treats, stores, or disposes of any hazardous waste.

18. Since at least September 21, 1990, and continuing until the present, Defendants have failed to evaluate wastes and have failed to develop a written waste analysis plan as required by O.A.C. Rules 3745-52-13 and/or 3745-65-13.

19. The conduct alleged in this Count constitutes violations of O.A.C. Rules 3745-52-13 and/or 3745-65-13 and O.R.C. Section 3734.13 for which Defendants are subject to injunctive relief pursuant to O.R.C. Sections 3734.10 and 3734.13(C) and for which Defendants are liable to pay to the State of Ohio a civil penalty of up to ten thousand dollars (\$10,000.00) for each day of each violation pursuant to O.R.C. Section 3734.13(C).

COUNT THREE

20. O.A.C. Rules 3745-54-16 and/or 3745-65-16 require a generator and the owner or operator of a hazardous waste facility to develop and implement a hazardous waste personnel training program which meets with the requirements of those Rules.

21. Since at least September 21, 1990, and continuing until the present, Defendants have failed to develop and implement a hazardous waste personnel training program as required by O.A.C. Rules 3745-54-16 and/or 3745-65-16.

22. The conduct alleged in this Count constitutes violations of O.A.C. Rules 3745-54-16 and/or 3745-65-16 and O.R.C. Section 3734.11 for which Defendants are subject to injunctive relief pursuant to O.R.C. Sections 3734.10 and 3734.13(C) and for which Defendants are liable to pay to the State of Ohio a civil penalty of up to Ten Thousand Dollars (\$10,000.00) for each day of each violation pursuant to O.R.C. Section 3434.13(C).

COUNT FOUR

23. O.A.C. Rules 3745-54-31 and/or 3745-65-31 requires that a generator and the owner or operator of a facility maintain and operate such facility to minimize the possibility of fire, explosion or any unplanned sudden or non-sudden release of hazardous waste into air, soil or surface waters which threaten human health or the environment.

24. Since at least September 21, 1990, and continuing until the present,

Defendants have failed to operate and maintain its Facility in such a manner as to minimize such threats at its Facility as required by O.A.C. Rules 3745-54-31 and/or 3745-65-31.

25. The conduct alleged in this Count constitutes violations of O.A.C. Rules 3745-54-31 and 3745-65-31 and/or O.R.C. Section 3734.11 for which Defendants are subject in injunctive relief pursuant to O.R.C. Sections 3734.10 and 3734.13(C) and for which Defendants are liable to pay to the State of Ohio a civil penalty of up to ten thousand dollars (\$10,000.00) for each day of each violation pursuant to O.R.C. Section 3734.13(C).

COUNT FIVE

26. O.A.C. Rules 3745-55-71 and 3745-55-73 and/or 3745-66-71 and 3745-66-73 require that a generator and the owner or operator of a facility keep hazardous waste containers in good condition, closed during storage and such containers shall not be handled in such a manner that may cause it to rupture or leak.

27. Since at least September 21, 1990, and continuing until the present, Defendants have failed to keep hazardous waste containers located at the Facility in good condition and covered as required by O.A.C. Rules 3745-55-71 and 3745-55-73 and/or 3745-66-71 and 3745-66-73.

28. The conduct alleged in this Count constitutes violations of O.A.C. Rules 3745-55-71 and 3745-55-73 and/or 3745-66-71 and 3745-66-73 and O.R.C. Section 3734.11 and for which Defendants are subject to injunctive relief pursuant to O.R.C. Sections 3734.10 and 3734.13(C) and for which Defendants are liable to pay to the State of Ohio a civil penalty of up to ten thousand dollars (\$10,000.00) for each day of each violation pursuant to O.R.C. Section 3734.13(C).

COUNT SIX

29. O.A.C. Rules 3745-55-74 and/or 3745-66-74 provide that a generator and the owner or operator of a facility shall inspect areas where containers are stored, at

least weekly, looking for leaks and for deterioration caused by corrosion or other factors.

30. Since at least September 21, 1990, and continuing until the present, Defendants have failed to inspect areas where containers are stored, at least weekly, looking for leaks and other deterioration pursuant to O.A.C. Rules 3745-55-74 and/or 3745-66-74.

31. The conduct alleged in this Count constitutes violations of O.A.C. Rules 3745-55-74 and/or 3745-66-74 and O.R.C. Section 3734.11 for which Defendants are subject to injunctive relief pursuant to O.R.C. Section 3734.10 and 3734.13(C) and for which Defendants are liable to pay to the State of Ohio a civil penalty of up to ten thousand dollars (\$10,000.00) for each day of each violation pursuant to O.R.C. Section 3734.13(C).

COUNT SEVEN

32. O.A.C. Rules 3745-52-73 and/or 3745-65-73 require that an owner or operator of a facility shall keep a written operating record at the facility.

33. Since at least September 21, 1990, and continuing until the present, Defendants have failed to keep a written operating record at the Facility pursuant to O.A.C. Rules 3745-52-73 and/or 3745-65-73

34. The conduct alleged in this Count constitutes violations of O.A.C. Rules 3745-52-73 and/or 3745-65-73 and O.R.C. Section 3745.11 and for which Defendants are subject to injunctive relief pursuant to O.R.C. Sections 3734.10 and 3734.13(C) and for which Defendants are liable to pay to the State of Ohio a civil penalty of up to ten thousand dollars (\$10,000.00) for each day of each violation pursuant to O.R.C. Section 3734.13(C).

COUNT EIGHT

35. O.A.C. Rules 3745-55-12 and/or 3745-66-12 require that the owner or operator of a facility shall have a written closure plan.

36. Since at least September 21, 1990, and continuing until the present, Defendants have failed to have a written closure plan that meets the requirements of O.A.C. Rules 3745-55-12 and/or 3745-66-12.

37. The conduct alleged in this Court constitutes violations of O.A.C. Rules 3745-55-12 and/or 3745-66-12 and O.R.C. Section 3734.11 and for which Defendants are subject to injunctive relief pursuant to O.R.C. Sections 3734.10 and 3734.13(C) and for which Defendants are liable to pay to the State of Ohio a civil penalty of up to Ten Thousand Dollars (\$10,000.00) for each day of each violation pursuant to O.R.C. Section 3734.13(C).

COUNT NINE

38. O.A.C. Rules 3745-55-42 and/or 3745-66-42 provide that the owner or operator of a facility must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements of the applicable rules pertaining to closure.

39. Since at least September 21, 1990, and continuing until the present, Defendants have failed to have a detailed written closure estimate of the cost of closing the active portion of the facility as provided by O.A.C. Rules 3745-55-42 and/or 3745-66-42.

40. The conduct alleged in this Count constitutes violations of O.A.C. Rules 3745-55-42 and/or 3745-66-42 and O.R.C. Section 3734.11 for which Defendants are subject to injunctive relief pursuant to O.R.C. Sections 3734.10 and 3734.13(C) and for which Defendants are liable to pay to the State of Ohio a civil penalty of up to Ten Thousand Dollars (\$10,000.00) for each day of each violations pursuant to O.R.C. Section 3734.13(C).

COUNT TEN

41. O. A. C. Rules 3745-55-43 and/or 3745-66-43 require the owner or operator of a hazardous waste facility to establish financial assurance for closure of the

facility.

42. the Defendants have failed to establish financial assurance for closure of the hazardous management units located at the Facility.

43. The conduct alleged in this Count constitutes violations of O. A. C. Rules 3745-55-43 and/or 3745-66-43 and R.C. 3734.11(A) for which Plaintiff is entitled to injunctive relief pursuant to O.R.C. 3734.10 and O.R.C. 3734.13(C) and for which such Defendants are liable for a civil penalty of up to Ten Thousand Dollars (\$10,000.00) per day for each day of violation, including each day subsequent to the filing of this Complaint, pursuant to O.R.C. 3734.13(C).

COUNT ELEVEN

44. O. A. C. Rules 3745-55-47 and/or 3745-66-47 provides that the owner or operator of a hazardous waste facility establish liability coverage for sudden accidental occurrences arising from the operations of the facility.

45. From a date not yet known to Plaintiff, but since at least September 21, 1990, and continuing to the present, the Defendants have failed to establish liability coverage for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from the operations at the Facility.

46. The conduct alleged in this Count constitutes violations of O. A. C. Rules 3745-55-47 and/or 3745-66-47 and O.R.C. 3734.11(A) for which Plaintiff is entitled to injunctive relief pursuant to O.R.C. 3734.10 and R.C. 3734.13(C) and for which such Defendants are liable for a civil penalty of up to Ten Thousand Dollars (\$10,000.00) per day for each day of violation, including each day subsequent to the filing of this

Complaint, pursuant to O.R.C. 3734.13(C).

PRAYER FOR RELIEF

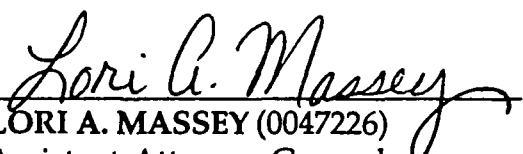
WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Issue the preliminary injunctive relief as requested by Plaintiff.
- B. Issue a permanent injunction requiring Defendants to comply with the requirements of Chapter 3734 of the Ohio Revised Code and the rules adopted thereunder and to correct those failures, omissions and/or actions which are in violation of the rules and laws cited in Counts of this Complaint. Specifically, issue an order permanently enjoining Defendants to:
 - 1) Submit closure plans for all hazardous waste management units at the facility pursuant to Rules 3745-66-10 through 3745-66-20 of the Ohio Administrative Code;
 - 2) Comply with financial assurance requirements pursuant to Rule 3745-66-43 of the Ohio Administrative Code;
 - 3) Submit a detailed closure and post-closure cost estimate calculated pursuant to Rule 3745-66-42 of the Ohio Administrative Code;
 - 4) Comply with the financial responsibility requirements pursuant to Rule 3745-66-47 of the Ohio Administrative Code.
- C. Order Defendants, pursuant to O.R.C. Section 3734.13(C), to pay into the State of Ohio Treasurer, to the credit of the hazardous waste clean-up fund, a civil penalty for the violations set forth above in the amount of Ten Thousand Dollars (\$10,000.00) per day for each day of each violation; plus Ten Thousand dollars (\$10,000.00) per day for each day of each violation after the filing of this Complaint.
- D. Order Defendants to pay the costs of this action.

E. Grant such other relief as may be necessary and just.

Respectfully submitted,

LEE FISHER
ATTORNEY GENERAL OF OHIO


LORI A. MASSEY (0047226)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43266-0410
Telephone: (614) 466-2766

Counsel for Plaintiff, State of Ohio